



Signed and Filed: March 27, 2023

Dennis Montali

DENNIS MONTALI
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re:) Bankruptcy Case
PG&E CORPORATION,) No. 19-30088-DM
- and -) Chapter 11
PACIFIC GAS AND ELECTRIC COMPANY,) Jointly Administered
Reorganized Debtors.)
☐ Affects PG&E Corporation) **Hearing Held**
☐ Affects Pacific Gas and) Date: March 7, 2023
Electric Company) Time: 10:00 a.m.
☒ Affects both Debtors) Via video/teleconference
* All papers shall be filed in)
the Lead Case, No. 19-30088 (DM).)

ORDER DENYING MOTION FOR RECONSIDERATION
BY SPIRO JANNINGS

On January 13, 2022, the court signed an Order Disallowing and Expunging Claim No. 58462, Filed October 17, 2019, of Spiro Jannings ("Order Disallowing Claim") (Dkt. 11829). On January 26, 2022, Creditor Spiro Jannings ("Jannings") filed the Motion for Relief From Order ("First Motion") (Dkt. 11871) seeking to vacate the Order Disallowing Claim pursuant to Fed. R. Civ. P.

1 60(b) or 59(e) ("Rule"), as applied to bankruptcy matters by Fed.
2 R. Bankr. P. 9023 and 9024. On March 14, 2022, the court
3 entered an Order Denying the Motion ("Order Denying
4 Reconsideration") (Dkt. 12009).

5 Ten months later, on January 13, 2023, Jannings filed the
6 Claimant's Omnibus Motion for Relief from Final Order, Motion
7 for Relief from Stay, and Response to Reorganized Debtor's
8 Objection to Claim No. 58462, Filed October 17, 2019 ("Renewed
9 Motion") (Dkt. 13455). The Renewed Motion seeks to vacate the
10 Order Disallowing Claim, nullify the Order Denying
11 Reconsideration, and obtain relief from the discharge injunction
12 to allow Jannings' underlying disallowed claim against the
13 Debtors continue apace in state court pursuant to Rule 60(b)(1)
14 or (b)(3). For the reasons set forth below, the court will DENY
15 the Renewed Motion.

16 A motion for reconsideration of an allowed or disallowed
17 claim may be filed pursuant to Rule 60 if the motion is "made
18 within a reasonable time . . . no more than a year after the
19 entry of the judgment or order or the date of the proceeding."
20 Rule 60(c).

21 Whether a reconsideration motion has been filed in a
22 reasonable amount of time "requires a case-by-case analysis.
23 Such determination takes into consideration 'the interest in
24 finality, the reason for delay, the practical ability of the
25 litigant to learn earlier of the grounds relied upon, and
26 prejudice to other parties.'" *In re Williams*, 287 B.R. 787, 793
27 (B.A.P. 9th Cir. 2002) (quoting *Ashford v. Steuart*, 657 F.2d
28 1053, 1055 (9th Cir. 1981)).

1 Here, Jannings waited exactly one year from the entry of
2 the court's Order Disallowing Claim to file the Renewed Motion.
3 Jannings explains that he sought new counsel after the court's
4 entry of the Order Denying Consideration that was based in part
5 of the inactions of his then-counsel, Scott Furstman and Michael
6 St. James. However, Jannings was unable to find new counsel
7 easily, and then the counsel he did hire, Mark Bostick, failed
8 to timely file a motion for reconsideration.

9 Jannings presents two different timelines of his travails.
10 In the first timeline, found in the Renewed Motion, Jannings
11 immediately sought new counsel in March 2022, "directly after
12 this Court's 3/14/22 Decision," and eventually hired attorney
13 Mark Bostick. Then, "Mr. Bostick failed to perform as agreed
14 and fecklessly dragged Jannings along; representation ended
15 01/12/23," leaving Jannings with less than one day to file the
16 Renewed Motion and accompanying Declaration.

17 In the second timeline, found in Jannings' Declaration in
18 Support of Reply (Dkt. 13562), Jannings was not even aware of
19 the Court's Order Denying Reconsideration until a month after
20 entry of the order, on April 14, 2022. After being advised to
21 seek new counsel, Jannings spent a few weeks contacting firms
22 but was repeatedly turned away. He chose to hire Mr. Bostick
23 within weeks, and officially retained Mr. Bostick as counsel in
24 July 2022 after due diligence was completed. Then around late
25 November 2022, Jannings "became suspicious Mr. Bostick was not
26 going to complete [the] agreement to file motions for vacating
27 the January 13, 2022 order, and chose to proceed *pro se*."

1 The story of each timeline is the same—Jannings' delay in
2 filing the Renewed Motion is reasonable because the counsel he
3 hired as soon as he was able gave him the run-around until it
4 was almost too late. However, in a matter in which the court
5 must analyze timing, a discrepancy of a month or months on both
6 the front and back-end on Jannings' timelines is notable, along
7 with the fact that Mr. St. James was counsel of record for
8 Jannings until January 12, 2023. The court simply does not find
9 Jannings shifting narrative to be credible. With such
10 uncertainty surrounding the timeline, the court cannot conclude
11 that the basis for the delay is reasonable.

12 As for the other factors for determining whether a delay in
13 filing a motion for reconsideration is reasonable, Reorganized
14 Debtors have been able to rely on the court's decision for more
15 than 10 months, and while the court maintains that the prejudice
16 to Reorganized Debtors in simply continuing state court
17 litigation is minimal, there is an overriding interest in
18 finality that prevails. The court does not weigh whether
19 Jannings could have learned of the grounds for the Renewed
20 Motion earlier, as his argument is that he learned of the need
21 to file the Renewed Motion quickly, but the delay is not
22 attributable to him.

23 Much of the Renewed Motion is spent on the merits of
24 Jannings' underlying claim, and an argument that Reorganized
25 Debtors committed fraud under Rule 60(b)(3) by presenting an
26 incomplete narrative of Jannings' underlying claim, which he
27 hopes to challenge via an amended complaint in state court. The
28 fraud or misrepresentation described in Rule 60(b)(3) is not

1 about the court, but about the movant who must show "an order
2 was obtained through fraud, misrepresentation, or other
3 misconduct that prevented the losing party from fully and fairly
4 representing its defense. Also, the fraud must not have been
5 discoverable with the exercise of due diligence." *United Student*
6 *Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 213 (B.A.P.
7 9th Cir. 2006) (citations omitted). As the court has discussed
8 at length, the only factor that prevented Jannings' opposition
9 to Reorganized Debtors' request to disallow Jannings' proof of
10 claim was Jannings' (through his former counsel's) own failure
11 to respond to the request, despite a three-month period to do
12 so. The court finds no basis to reconsider its prior orders
13 under Rule 60(b)(3).

14 Accordingly, the Renewed Motion is DENIED.

15 **END OF ORDER**
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COURT SERVICE LIST

Spiro Jannings
1304 Shortridge Ave. Unit C
San Jose, CA 95116